

ON JUNE 19, 2015, R277-602 WAS APPROVED BY THE UTAH STATE BOARD OF EDUCATION (USBE) ON SECOND READING. THE RULE IS SCHEDULED FOR THIRD AND FINAL READING BY THE USBE AT ITS AUGUST 7, 2015 MEETING.

**R277. Education, Administration.**

**R277- 602. Special Needs Scholarships - Funding and Procedures.**

**R277-602-[2]1. Authority and Purpose.**

~~[A.]~~ (1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision of the public school system under the Board~~[7];~~;

(b) Subsection 53A-1a-706(5)(b), which provides for Board rules to establish timelines for payments to private schools~~[7];~~;

(c) ~~[Section 53A-3-410(6)(b)(i)(c)]~~ Title 53A, Chapter 15, Part 15, Background Checks, which provides for criminal background checks and ongoing monitoring for employees and volunteers~~[7];~~;

(d) Section 53A-1a-707, which provides for Board rules about eligibility of students for scholarships and the application process for students to participate in the scholarship program~~[7];~~ and~~[-by]~~

(e) Subsection 53A-1-401(3), which allows the Board to adopt rules in accordance with its responsibilities.

~~[B.]~~ (2) The purpose of this rule is to:

(a) outline responsibilities ~~[for parents/students, public schools, school districts or charter schools]~~ of a parent, an LEA, and an eligible private school~~[s]~~ that accepts a scholarship~~[s]~~ from a special needs student~~[s]~~ and the ~~[State]~~ Board~~[-of Education]~~ in providing choice for a parent~~[s]~~ of a special needs student~~[s]~~ who chooses to have ~~[their children]~~ a student served in a private school~~[s]~~; and

(b) ~~[-in]~~ provid~~[ing]~~e accountability for the citizenry in the administration and distribution of the scholarship funds.

**R277-602-[1]2. Definitions.**

~~[A. "Agreed upon procedure" for purposes of this rule means the agreed upon procedure as provided for under Section 53A-1a-705(1)(b)(i)(B).]~~

~~[C.]~~ (1) "Appeal" ~~[for purposes of the rule]~~ means an opportunity to discuss~~[7]~~ or contest a final administrative decision consistent with and expressly limited to the procedures of this rule.

~~[N.]~~ (2) "~~[Special Needs Scholarship]~~ Appeals Committee ~~[-Appeals Committee]~~" means a committee comprised of:

(~~[1]~~) a) the special needs scholarship coordinator;

(~~[2]~~) b) the USOE Special Education Director;

(~~[3]~~) c) one individual appointed by the Superintendent or designee; and

(~~[4]~~) d) two Board-designated special education advocates.

~~[B.]~~ (3) "~~[Annual a]~~ Assessment" ~~[for purposes of this rule]~~ means a formal testing procedure carried out under prescribed and

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uniform conditions that measures a student's<sup>[4]</sup> academic progress, consistent with Subsection 53A-1a-705(1)(f).

~~[D.]~~ (4) "Assessment team" means the individuals designated under Subsection 53A-1a-703(1).

~~[E.]~~ "Audit of a private school" for purposes of this rule means a financial audit provided by an independent certified public accountant, as provided under Section 53A-1a-705(1)(b).

~~[F.]~~ "Board" means the Utah State Board of Education.]

~~[G.]~~ (5) "Days" means school days unless specifically designated otherwise in this rule.

~~[H.]~~ "Disclosure to parents" for purposes of this rule means the express acknowledgments and acceptance required under Section 53A-1a-704(5) as part of parent application available through schools districts.]

~~[I.]~~ (6) "Eligible student" ~~[for purposes of this rule]~~ means ~~[:]~~ a student who meets the qualifications described in Section 53A-1a-704.

~~[(1) the student's parent resides in Utah;~~

~~(2) the student has a disability as designated in 53A-1a-704(2)(b); and~~

~~(3) the student is school age.~~

~~(4) Eligible student also means that the student was enrolled in a public school in the school year prior to the school year in which the student will be enrolled in a private school, has an IEP and has obtained acceptance for admission to an eligible private school; and~~

~~(5) The requirement to be enrolled in a public school in the year prior and have an IEP does not apply if:~~

~~(a) the student is enrolled or has obtained acceptance for admission to an eligible private school that has previously served students with disabilities; and~~

~~(b) an assessment team is able to readily determine with reasonable certainty that the student has a disability and would qualify for special education services if enrolled in a public school and the appropriate level of special education services which would be provided were the student enrolled in a public school.]~~

~~[J.]~~ (7) "Enrollment" ~~[for purposes of this rule]~~ means that:

(a) the student has completed the school enrollment process~~[:]~~;

(b) the school maintains required student enrollment information and documentation of age eligibility~~[:]~~;

(c) the student is scheduled to receive services at the school~~[:]~~;

(d) the student attends regularly~~[:]~~; and

(e) the school has ~~[been]~~ accepted the student consistent

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with Rule R277-419 and the student's IEP.

~~[K.]~~ (8) "Final administrative action" ~~[for purposes of this rule]~~ means the concluding action under ~~[Section 53A-1a-701 through 53A-1a-710]~~ Title 53A, Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs Act and this rule.

~~[L.]~~ "Individual education program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with Board Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

~~[M.]~~ (9) "Private school that has previously served a student[s] with a disability" means a school that:

(~~[1]~~)a) has enrolled a student[s] within the last three years under the special needs scholarship program;

(~~[2]~~)b) has enrolled a student[s] within the last three years who ha[ve]s received special education services under an Individual Services Plan[s] (ISP) from ~~[the school district]~~ an LEA where the school is geographically located; or

(~~[3]~~)c) can provide other evidence to the Board that is determinative of having enrolled a student[s] with a disability within the last three years.

~~[O.]~~ "USOE" means the Utah State Office of Education.

~~[P.]~~ (10) "Warrant" means payment by check to a private school.

### **R277-602-3. Parent[/Guardian] Responsibilities and Payment Provisions.**

~~[A.]~~ (1) If the student is enrolled in a public school or was enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent[/guardian] shall submit an application, available from the ~~[USOE]~~ Superintendent or online, to the ~~[school district or charter school]~~ LEA within which the parent[/guardian] resides.

(~~[1]~~)a) Consistent with the timeline provided in Subsection 53A-1a-704(4), ~~[P]~~ the parent shall complete all required information on the application and submit, ~~[the following documentation]~~ with the application ~~[form]~~, ~~[consistent with the timeline provided in Section 53A-1a-704(4)]~~ documentation that:

(~~[a]~~)i) ~~[documentation that]~~ the parent[/guardian] is a resident of the state ~~[of Utah]~~;

(~~[b]~~)ii) ~~[documentation that]~~ the student is at least ~~[five]~~ three years of age before September 2 of the year of enrollment ~~[, consistent with Section 53A-3-402(6)]~~;

(~~[c]~~)iii) ~~[documentation that]~~ the student is not more than 21 years of age and has not graduated from high school ~~[consistent with Section 53A-15-301(1)(a)]~~;

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~~([d]iv)~~ ~~[documentation that]~~ the student has satisfied ~~[R277-602-3A or B]~~ Subsection (1) or (2); and

~~([e]v)~~ ~~[documentation that]~~ the student has official acceptance at an eligible private school, as ~~[defined under]~~ established by Section 53A-1a-705~~[7]~~.

~~([2]b)~~ The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

~~([3]c)~~ Any intentional falsification, misinformation, or incomplete information provided on the application may result in the cancellation of the scholarship to the student and non-payment to the private school.

~~[B.]~~ (2) If the student was not enrolled in a public school in the year previous to the year in which the scholarship is sought, the parent~~/guardian~~ shall submit an application to the school district~~[in which the private school is geographically located (school district)]~~ responsible for child find under ~~[IDEA]~~ the Individuals with Disabilities Education Act, ~~[Sec. 612(a)(3)]~~ 20 U.S.C. Sec. 1414.

~~([1]a)~~ The parent shall complete all required information on the application and submit, ~~[the following]~~ with the application, documentation ~~[with application form]~~ that:

~~([a]i)~~ ~~[documentation that]~~ the parent~~/guardian~~ is a resident of the state~~[of Utah]~~;

~~([b]ii)~~ ~~[documentation that]~~ the student is at least ~~[five]~~ three years of age~~[7]~~ before September 2 of the year of enrollment;

~~([c]iii)~~ ~~[documentation that]~~ the student is not more than 21 years of age and has not graduated from high school ~~[consistent with Section 53A-15-301(1)(a)]~~;

~~([d]iv)~~ ~~[documentation that]~~ the student has satisfied ~~[R277-602-3A or B]~~ Subsection (1) or (2); and

~~([e]v)~~ ~~[documentation that]~~ the student has official acceptance at an eligible private school, as ~~[defined under]~~ established by Section 53A-1a-705.

~~([2]b)~~ The parent shall sign the acknowledgments and refusal to consent to services on the application form consistent with Section 53A-1a-704.

~~([3]c)~~ The parent shall participate in an assessment team meeting to determine:

~~(i)~~ if a student would qualify for special education services; and

~~(ii)~~ the level of services for which the student would be eligible if enrolled in a public school.

~~[C.]~~ (3) (a) ~~[Payment provisions - Upon review and receipt of documentation that verifies a student's admission to, or continuing~~

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~~enrollment and attendance at, a private school, the Board shall make scholarship payments quarterly in equal amounts in each school year in which a scholarship is in force]~~The Board shall make a scholarship payment in accordance with Section 53A-1a-706.

~~[D. A special needs scholarship shall be effective for three years subject to renewal under Section 53A-1a-704(6).]~~

~~[E.]~~(b) The parent shall, consistent with Subsection 53A-1a-706(8), endorse the warrant received by the private school from the ~~[USOE]~~Superintendent no more than 15 ~~[school]~~calendar days after the private school's receipt of the warrant.

~~[F.]~~(4)(a) The parent shall notify the Board in writing within five days if the student does not continue in enrollment in an eligible private school for any reason, including:

(i) parent~~[7]~~ or student choice~~[7]~~;

(ii) suspension or expulsion of the student; or

(iii) the student misses more than 10 consecutive days~~[at which point].~~

(b) If the student does not continue in enrollment, the Board may modify the payment to the private school~~[consistent with R277-419-13]~~.

~~[G.]~~(5) The parent shall cooperate and respond within 10 days to an enrollment cross-checking request from the Board.

~~[H.]~~(6) The parent shall notify the Board in writing by March 1 annually to indicate the student's continued enrollment.

#### **R277-602-4. ~~[School District or Charter School]~~LEA Responsibilities.**

~~[A.]~~(1) ~~[The school district or charter school]~~An LEA that receives ~~[the]~~a student's scholarship application consistent with Subsection 53A-1a-704(4) shall forward an application~~[s]~~ to the Board no more than 10 days following receipt of the application.

~~[B.]~~(2) The ~~[school district or charter school]~~LEA that receive~~d~~s ~~[the]~~a student's scholarship application shall:

~~[(1)a] [receive applications from students/parents;~~

~~—(2)—]~~verify enrollment of the student seeking a scholarship in a previous school year within a reasonable time following contact by the Board;

~~[(3)b]~~verify the existence of the student's IEP and level of service to the ~~[USOE]~~Superintendent within a reasonable time;

~~[(4)c]~~provide personnel to participate on an assessment team to determine:

~~[(a)i]~~(A) if a student who was previously enrolled in a private school that has previously served a student~~[s]~~ with a disability~~[ies]~~ would qualify for special education services if enrolled in a public school; and

(B) the appropriate level of special education services

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~~[which]~~that would be provided were the child enrolled in a public school for purposes of determining the scholarship amount consistent with Subsection 53A-1a-706(2); or

~~[(b)]~~ii) if a student previously receiving a special needs scholarship is entitled to receive the scholarship during the subsequent eligibility period.

~~[C.]~~(3) A ~~[S]~~special needs scholarship student~~[s shall]~~ may not ~~[be]~~enroll~~[ed]~~ in ~~[public or charter schools]~~an LEA for dual enrollment or an extracurricular activit~~[ies]~~y, consistent with the parent's~~['/guardians']~~ assumption of full responsibility for a student's~~[']~~ services under Subsection 53A-1a-704(5).

~~[D.]~~(4) ~~[School districts and charter schools]~~An LEA shall cooperate with the Board in cross-checking special needs scholarship student enrollment information, as requested by the Board.

~~[E. School district and charter school notification to students with IEPs.]~~

~~[(1)]~~5(a) ~~[School districts and charter schools]~~An LEA shall provide written notice to a parent~~[s or guardians]~~ of a student~~[s]~~ who ha~~[ve]~~s an IEP of the availability of a scholarship to attend a private school ~~[through the Special Needs Scholarship Program through state special education monitoring procedures]~~in accordance with Subsection 53A-1a-704(10).

~~[(2)]~~b) The written notice shall consist of the following statement: ~~[School districts and charter schools are]~~A local education agency is required by Utah law, Subsection 53A-1a-704(10), to inform parents of students with IEPs enrolled in public schools, of the availability of a scholarship to attend a private school through the Carson Smith Scholarship Program.

~~[(3)]~~ The written notice shall be provided no later than 30 days after the student initially qualifies for an IEP.

~~[(4)]~~ The written notice shall be provided annually no later than February 1 to all students who have IEPs.

~~[(5)]~~ The written notice shall include the address of the Internet website maintained by the Board that provides prospective applicants and their parents with program information and application forms for the Carson Smith Scholarship Program.

~~[(6)]~~ A school district, school within a school district, or charter school that has an enrolled student who has an IEP shall post the address of the Carson Smith Internet website maintained by the Board on the school district's or school's website, if the school district or school has one.]

#### **R277-602-5. State Board of Education Responsibilities.**

~~[A.]~~(1) No later than April 1, ~~[(F)]~~the Board shall provide an application~~[s]~~ containing acknowledgments required under

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Subsection 53A-1a-704(5), for a parent[s] seeking a special needs scholarship:

(a) online[~~7~~];

(b) at the Board[~~s~~] office[s,~~7~~]; and

(c) at [school district or charter school] LEA offices[, and at charter schools no later than April 1 prior to the school year in which admission is sought].

[~~B~~](2) The Board shall provide a determination that a private school meets the eligibility requirements of Section 53A-1a-705 as soon as possible but no more than 30 calendar days after the private school submits an application and complete[~~d~~]s documentation of eligibility.

(3) The Board may:

([~~1~~]a) provide reasonable timelines within the application for satisfaction of private school requirements;

([~~2~~]b) issue letters of warning[~~7~~];

(c) require the school to take corrective action within a time frame set by the Board[~~7~~];

(d) suspend the school from the program consistent with Section 53A-1a-708[~~7~~]; [~~or~~]

(e) impose [~~such other~~] a penalt[ies]y as the Board determines appropriate under the circumstances[~~7~~];

([~~3~~]f) establish an appropriate[~~consequences or~~] penalt[ies]y for a private school[s] that fails to:

([~~a~~]i) [~~fail to~~] provide an affidavit[s] under Section 53A-1a-708;

([~~b~~]ii) [~~fail to~~] administer an assessments[, ~~fail to~~] or report an assessment[s] to a parent[s] or [~~fail to report assessments to~~] assessment team under Subsection 53a-1a-705(1) (f);

([~~c~~]iii) [~~fail to~~] employ teachers with credentials required under Subsection 53A-1a-705(g);

([~~d~~]iv) [~~fail to~~] provide to a parent[s] relevant credentials of teachers under Subsection 53A-1a-705([~~h~~]i); or

([~~e~~]v) [~~fail to~~] require a completed criminal background [checks] and ongoing monitoring under [~~Section 53A-3-410(2) and 3~~] Title 53A, Chapter 15, Part 15, Background Checks and take appropriate action consistent with information received[~~7~~]; and

([~~4~~]g) initiate a complaint[s] and hold an administrative hearing[s], as appropriate, and consistent with [~~R277-602~~] this rule.

[~~C~~](4) The Board shall make a list of eligible private schools updated annually and available no later than June 1 of each year.

[~~D~~](5) The Board shall provide [~~F~~] information about an approved scholarship[s] and availability and level of funding [~~shall be provided~~] to a scholarship applicant parent[s/guardians]

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no later than March 1 of each year.

[E.] (6) The Board shall mail a scholarship payment[s] directly to a private school[s] as soon as reasonably possible consistent with Subsection 53A-1a-706(8).

[F.] (7) If an annual legislative appropriation is inadequate to cover all scholarship applicants and documented levels of service, the Board shall establish by rule a lottery system for determining the scholarship recipients, with preference provided for under Subsection 53A-1a-706(1) ~~[(c)(i)]~~ (e).

[G.] (8) The Board shall verify and cross-check, using USOE technology services, special needs scholarship student enrollment information consistent with Subsection 53A-1a-706(7).

#### **R277-602-6. Responsibilities of Private Schools that Receive Special Needs Scholarships.**

[A.] (1) A [P]private school[s] that intends to enroll a scholarship student shall submit [applications by March 1 prior to the school year in which it intends to enroll scholarship students] an application by the deadline established in Section 53A-1a-705.

[B.] (2) A private school shall submit an [A]application[s] and appropriate documentation[~~from private schools~~] for eligibility to receive a special needs scholarship student[s shall be provided] to the [USOE]Superintendent on forms designated by the [USOE]consistent with Section 53A-1a-705(3)]Superintendent.

[C.] (3) A [P]private school[s] shall satisfy criminal background check and ongoing monitoring requirements for an employee[s] and a volunteer[s] consistent with [Section 53A-3-410]Title 53A, Chapter 15, Part 15, Background Checks.

[D.] (4) A [P]private school[s] that seeks to enroll a special needs scholarship student[s] shall, in concert with the parent seeking a special needs scholarship for a student, initiate the assessment team meetings required under Section[s] 53A-1a-704[~~(3)~~ and 53A-1a-704(6)].

[(1)]a) A private school shall schedule a [M]meeting[s shall be scheduled] at a time[s] and location[s] mutually acceptable to the private school[s], the applicant parent[s], and participating public school personnel.

[(2)]b) Designated private school and public school personnel shall maintain documentation of the meeting[s] and the decision[s] made for [the]a student[s].

[(3)]c) (i) Except as provided by Subsection (4)(c)(ii), a private school and public school shall confidentially maintain [D]documentation regarding a required assessment team meeting[s], including documentation of:

(A) a meeting[s] for a student[s] denied a scholarship[s] or



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service[s]; and

~~(B) a student[s] admitted into a private school[s] and the[ir] student's level[s] of service[, shall be maintained confidentially by the private and public schools, except the information shall be provided].~~

~~(ii) Upon request by the Superintendent, a private school and public school shall provide the documentation described in Subsection (4)(c)(i) to the [USOE]Superintendent for purposes of determining student scholarship eligibility[7] or for verification of compliance[—upon request by the USOE].~~

~~[E.] (5) A [P]private school[s] that receiv[ing]es a scholarship payment[s] under this rule shall provide complete student records in a timely manner to another private school[s] or a public school[s] that request[ing]s student records if a parent[s have] transfer[red]s a student[s] under Subsection 53A-1a-704(7).~~

~~[F.] (6) A [P]private school[s] shall notify the Board within five days if the student does not continue in enrollment in an eligible private school for any reason, including:~~

~~(a) parent[7] or student choice[7];~~

~~(b) suspension or expulsion of the student; or~~

~~(c) the student misses more than [10]ten consecutive days of school.~~

~~[G.] (7) A [P]private school[s] shall satisfy health and safety laws and codes [under]required by Subsection 53A-1a-705(1)(d), including:~~

~~[(1)a] (a) the adoption of emergency preparedness response plans that include training for school personnel and parent notification for fire drills, natural disasters, and school safety emergencies; and~~

~~[(2)b] (b) compliance with Rule R392-200, Design, Construction, Operation, Sanitation, and Safety of Schools.~~

~~[H.] (8) (a) An approved eligible private school that changes ownership shall submit a new application for eligibility to receive a Carson Smith scholarship payment[s] from the Board[;—the application shall demonstrate]:~~

~~(i) that demonstrates that the school continues to meet the eligibility requirements of [R277-602.]this rule; and~~

~~[(1)ii] (ii) [The application for renewed eligibility shall be received from the school—]within 60 calendar days of the [change of ownership.~~

~~—(2) Ownership changes on the—]date that an agreement is signed between previous owner and new owner.~~

~~[(3)b] (b) If the Superintendent does not receive the application[ is not received by the USOE] within the [60 days,]time described in Subsection (8)(a)(ii):~~

~~(i) the new owner[7] of the school is presumed ineligible to~~

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receive continued Carson Smith scholarship payments from the ~~[USOE and,]~~ Superintendent;

(ii) at the discretion of the Board, the [USOE] Superintendent may reclaim any payments made to a school within the previous 60 calendar days[-];

~~([4]iii) [If the application is not received by the USOE within 60 days after the change of ownership,] the private school is not an eligible school;~~ and

(iv) the private school shall submit a new application for Carson Smith eligibility consistent with the requirements and timelines of [R277-602] this rule.

#### **R277-602-7. Special Needs Scholarship Appeals.**

~~[A.]~~ (1) (a) A parent[-or legal guardian] of an eligible student or a parent[-or legal guardian] of a prospective eligible student may appeal only the following actions under this rule:

([1]i) an alleged [USOE-]violation[s] by the Superintendent of Sections 53A-1a-701 through 710 or [R277-602] this rule; or

([2]ii) an alleged [USOE-]violation[s] by the Superintendent of a required timeline[s].

(b) An appellant has no right to additional elements of due process beyond the specific provisions of this rule.

~~[B.]~~ (2) The Appeals Committee may not grant an appeal contrary to [the statutory provisions of-] Sections 53A-1a-701 through 53A-1a-710.

~~[C.]~~ (3) A parent shall submit [A] an appeal[-shall be submitted]:

(a) in writing to the USOE Special Needs Scholarship Coordinator at: Utah State Office of Education, 250 East 500 South, P.O. Box 144200, Salt Lake City, UT 84114-4200; and

(b) within 15 calendar days of written notification of the final administrative decision.

~~([1]4) (a) [The appeal opportunity is expressly limited to an appeal submitted in writing for USOE consideration.] The appeal opportunity does not include an investigation required under or similar to an IDEA state complaint investigation.~~

~~[(2) Appellants have no right to additional elements of due process beyond the specific provisions of this rule.]~~

~~([3]b) Nothing in the appeals process established under [R277-602] this rule shall be construed to limit, replace, or adversely affect parental appeal rights available under IDEA.~~

~~[D. Appeals shall be made within 15 days of written notification of the final administrative decision.]~~

~~[E.]~~ (5) [Appeals shall be considered by t] The Appeals Committee shall:

(a) consider an appeal within 15 calendar days of receipt of

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the written appeal~~[7]~~;

~~[F.]~~ (b) ~~[The decision of the Appeals Committee shall be transmitted]~~ transmit the decision to a parent~~[s]~~ no more than ten calendar days following consideration by the Appeals Committee~~[7]~~; and

~~[G.]~~ (c) ~~[Appeals shall be]~~ finalize~~[d]~~ an appeal as expeditiously as possible in the joint interest of schools and students involved.

~~[H.]~~ (6) The Appeals Committee's decision is the final administrative action.

**KEY: special needs students, scholarships**

**Date of Enactment or Last Substantive Amendment: ~~[August 7, 2014]~~ 2015**

**Notice of Continuation: ~~[June 10, 2013]~~ 2015**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1a-706(5) (b); ~~[53A-3-410(6) (i) (c)]~~ Title 53A, Chapter 15, Part 15; 53A-1a-707; 53A-1-401 (3)**